IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1800 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K.S. DIYOL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1800 of 1987

MR BP TANNA for Petitioner No. 1

MR SP HASURKAR for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/04/2003

ORAL JUDGEMENT

1. By way of this petition, filed under Article 226 of the Constitution of India, the petitioner prayed for issuing writ of mandamus directing the respondents to fix the deemed date of promotion of his promotion with effect from 6.10.1974 and to give all other benefit of service by placing him at Sr.No.180-A in the seniority list of

Unarmed Police Inspector.

2. The grievance of the petitioner, in this petition, is that on 6.10.1974 his Juniors were promoted to the higher post of Police Inspector from the post of P.S.I., but he was not promoted. He was promoted later on i.e. on 1.4.1980 with retrospective effect from 1.1.1978, instead of 6.10.1974. When he was not promoted in 1974, he had earlier made representation on 29.4.1978. Thereafter, he had made another representation dated 17.3.1982 which was rejected by the State Government on 21.6.1984 (Annexure : I). Thereafter, after a period of almost 3 years i.e. on 28.4.1987 the petitioner has filed this petition before this Court. It appears from the order sheet of this case that this petition was initially placed before the learned Single Judge of this Court on 24.9.1987 and straightway, without issuing Notice to the otherside, the petition was admitted by issuing "Rule" and it was fixed for hearing in the month of February, 1988. However, due to some or the other reasons the matter could not be heard and finally disposed of till today. During the pendency of this petition, the petitioner reached the age of superannuation and retired from service on 31.7.1997, as stated at the Bar by the learned Counsel for the petitioner.

3. From the above, it is clear that the Juniors of the petitioner were promoted but he was not promoted on 6.10.1974, but except making representation, that too, after a period of almost 4 years in 1978, he had done nothing. Even after he was promoted later on by an order dated 1.4.1980 with retrospective effect from 1.1.1978 he did not do anything for a period of almost 2 years and for the first time he made another representation dated 17.3.1982 to the State Government which was rejected on 21.6.1984 (Annexure : I), thereafter, he slept over the matter for a period of nearly about 3 years and only on 28.4.1987 he approached this Court by way of this petition. Thus, the petition suffers from the vice of gross delay and latches which has remained unexplained. In view of this learned A.G.P. Shri Pancholi, appearing for the respondent, has rightly submitted that without going into the legality and validity of the order this petition should be dismissed on the ground of gross delay and latches for years together.

4. In support of his submission Shri Pancholi has relied on the decision of the Hon'ble Supreme Court reported in AIR 1987 SC 251 and the Judgment of the learned Single Judge of this Court, reported in 2002 (3)

GLR 207.

5. However, learned Counsel Shri Kariel for Shri Tanna for the petitioner submitted that though there was a delay on the part of the petitioner in approaching this Court by way of this petition, the learned Single Judge has straightway admitted the petition way back in 1987. Therefore, it would not be proper for this Court to dismiss this petition after a period of 16 years.

6. It is true that the learned Single Judge of this Court had straightway admitted the petition in 1987 and due to some or the other reasons the matter could not be heard for a period of nearly 16 years. Merely because the petition was straightway admitted that does not mean that the other side is not entitled to raise preliminary objection regarding gross delay. In the instant case, before issuing Rule, if the learned Single Judge had issued the Notice then at that stage this very objection of gross delay and latches would have been taken by the other side and considering the said objection the learned Single Judge might not have entertained this petition. Under the circumstances merely because the learned Single Judge thought it fit to admit the petition and issued 'Rule', without issuing notice to the other side, it does not mean that other side is precluded from raising the contention of gross delay and latches and this Court is precluded from deciding the point of delay.

7. Considering the facts and circumstances of the case, as narrated hereinabove, I am of the considered opinion that the objection raised by the learned A.G.P. Shri Pancholi, regarding gross delay and latches in filing this petition, is required to be accepted, when such a gross delay of years together remained unexplained.

8. When there is gross unexplained delay on the part of the petitioner in filing the petition, then certainly this Court would not exercise its extraordinary jurisdiction in favour of the petitioner. The Law on this point is very clear. Those who are vigilant only, they get relief and not others.

9. In view of the above discussion, without going into the merit and legality of the order, this petition is required to be dismissed solely on the ground of gross delay and latches.

10. Before parting, I must state that the representation dated 17.3.1982 regarding giving deem date

of promotion with effect from 6.10.1974 was rejected by the State Government by order dated 21.6.1984 (Annexure:I). Though the said order is annexed there is no challenge to it and no prayer is made in the petition regarding that order.

11. In view of the above discussion, this petition fail and is hereby dismissed. Rule is discharged. However, there shall be no order as to costs.

sd/-

Date : April 23, 2003 (B.J.Shethna, J.)

sas